

*About DrugScope*

DrugScope is the UK's leading independent centre of expertise on drugs and drug use, and the national membership organisation for the drug and alcohol field, with around 450 members. DrugScope also incorporates the London Drug and Alcohol Network (LDAN). DrugScope was a partner in the Home Office-funded Safer Future Communities initiative from 2011-13; we are also a partner in the Making Every Adult Matter coalition, and a member of the Criminal Justice Alliance. Our website is at <http://www.drugscope.org.uk/>

Summary

- A significant proportion of prisoners serving short sentences for non-violent crimes have drug and/or alcohol problems.
- As the revised impact assessment for the Bill notes, the new supervision period in the community for those sentenced to up to two years custody will lead to an increased number of breaches; this is a particular risk for those with drug and/or alcohol problems, who may lead 'chaotic' lives. Increased breach rates will result in costs to the criminal justice system.
- There is little evidence that the extension of the drug testing requirement (for those on licence and under the new supervision period) from Class A to Class A and B drugs will prove an effective approach in addressing drug-related offending. Moreover, the impact assessment for the Bill indicates it will result in additional costs as a result of increased breach rates.
- Following the abolition of the National Treatment Agency in April 2013 and the shift of budgets and commissioning responsibilities for drug services to local authorities, it is not clear that the levels of provision needed to implement the new 'drug appointment requirement' will be available. A lack of specialist provision in some areas may also result in some people being mandated to attend appointments at services that are not able to meet their needs – for instance, women being required to attend appointments in inappropriate settings.
- Additionally, the evidence for the effectiveness of mandating people to attend appointments as a way of ensuring subsequent engagement with treatment is not convincing. We are also concerned that, while the Bill specifies that there is no "requirement to submit to treatment" under the new requirement, how "treatment" is interpreted may vary in practice. As such, further clarification is needed.

*Post-prison supervision for those sentenced to up to two years custody*

1. Clauses 2 and 3 of the Bill introduce a post-custodial licence period for those sentenced to up to 12 months in prison, as well as a period of 'statutory rehabilitation' in the community for those sentenced to up to two years custody; for any individual sentenced to up to two years in prison, the licence period and the supervision period together will last 12 months. Thus, an individual sentenced to six months custody would serve three months in custody, three months on licence in the community, followed by nine months of supervision.
2. DrugScope recognises the importance of support for those leaving prison. However, in the sanctioning of those convicted of criminal offences, proportionality must be maintained. We are concerned that the introduction of 'statutory rehabilitation' will disrupt this by extending

considerably the period that those convicted of offences are subject to criminal justice supervision. This is most clearly illustrated, perhaps, by reference to those who are sentenced to very short periods in custody – an individual given a two-week prison sentence will, in practice, be ‘in the system’ for 53 weeks (one week in prison, followed by one week on licence and 51 weeks of supervision in the community).

3. The new licence period for those sentenced to less than 12 months in prison and the new supervision period will also mean an increased numbers of breaches, which will result in some individuals returning to prison (sanctions for breaching requirements of the supervision period include a return to custody for up to 14 days). This is a particular risk for those with drug and/or alcohol problems, who may lead ‘chaotic’ lives, and may find complying with the conditions imposed on them difficult. The revised impact assessment for the Bill sets out a ‘best estimate’ of a cost of around £27 million annually associated with breaches of licence and supervision conditions, and a ‘high estimate’ of £42 million per year.<sup>1</sup>
4. As the impact assessment also acknowledges, there is risk that the new supervision period will lead to sentencers ‘uptariffing’.
5. A more sensible and cost-effective approach would be to encourage greater use of community orders in place of short prison sentences. It is important to recognise the damage that short prison sentences, in themselves, can cause.<sup>2</sup>

#### *Extension of drug testing requirement to Class B drugs*

6. Clause 12 extends the drug testing requirement for those on licence from Class A to Class A and Class B drugs, such as cannabis, and Schedule 1 introduces the drug testing requirement – for Class A and B drugs – as a condition of the new supervision period. The requirement can be imposed when an individual has been sentenced for a ‘trigger’ offence (for instance, acquisitive offences), for the purpose of checking whether he or she is complying with any other requirement.
7. The Bill impact assessment points to a 2005-6 survey of prisoners, which found that 74% reported ever having used Class B and/or Class C drugs, and that cannabis was the most frequently reported drug, with 71% of prisoners reporting ever having used this. Of these, 77% reported using cannabis in the year before custody, and of these 85% (or 46% of all prisoners surveyed) reported using it in the four weeks before custody.
8. The extension of drug testing to Class B drugs appears to be based on a misplaced belief that comparatively widespread use of cannabis amongst prisoners indicates a strong link to offending behaviour. However, as a 2008 UK Drug Policy Commission report notes, “users of other drugs have much lower rates of offending than those who use heroin and crack and are less likely to have committed a crime to get drugs or when under the influence of drugs.” It concludes that “current evidence suggests that expanding drug testing is likely to result in decreased efficiency (and value for money) and quality being sacrificed to increased quantity.”<sup>3</sup>

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/208171/updated-rehabilitation-bill-impact-assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208171/updated-rehabilitation-bill-impact-assessment.pdf)

<sup>2</sup> See <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/184/184.pdf>

<sup>3</sup> <http://www.ukdpc.org.uk/wp-content/uploads/Policy%20report%20-%20Reducing%20drug%20use,%20reducing%20reoffending.pdf>

9. The extension of drug testing to Class B drugs would result in increased costs as a result of an increased breach rate, which the impact assessment puts at around £1 million annually. The impact assessment does not quantify the cost of drug testing itself, since the cost of testing will fall to providers of probation services and will be subject to competition: “If we were to publish an estimated figure for the future costs this could put contractual negotiations at risk and prejudice the effectiveness of the competition.” It is worth noting, however, that Home Office guidance on the Drug Interventions Programme (DIP) suggests costs of about £10–£14 per test using oral fluids, with urine testing more costly.<sup>4</sup> The impact assessment estimates that around 9,000 people per year will be subject to drug testing on release from custody; given that individuals are likely to be tested on multiple occasions, the potential costs are significant.

#### *New drug appointment requirement*

10. Clause 13 and Schedule 1 introduce a new ‘drug appointment requirement’ as a licence condition or requirement for the new supervision period. Under this, an individual would have to attend appointments with a view to addressing his or her “dependency on, or propensity to misuse, a controlled drug”. The requirement can be imposed only if it is judged that the misuse of a controlled drug caused or contributed to an offence of which the individual has been convicted, or is likely to cause or contribute to the commission of further offences; that the individual concerned is “dependent on, or has a propensity to misuse, a controlled drug”; that the dependency or propensity “requires, and may be susceptible to, treatment”; and that “arrangements have been made, or can be made, for the offender to have treatment.”
11. The requirement must set out who the individual subject to the condition has to meet with; the person they are required to meet with must have “the necessary qualifications or experience”. Where and when the appointments will take place, and the duration of appointments, must also be set out. The Bill specifies that under the requirement, there is no “requirement to submit to treatment.” Individuals will be treated as breaching if they fail to attend or remain at the appointment for the duration instructed.
12. The impact assessment does not attempt to quantify the costs of this new requirement, stating that “any additional cost will be met by treatment providers and health commissioners. Given that treatment needs should be met in any case, this is not expected to be a new burden. This is not about creating new treatment pathways, but about ensuring offenders attend as required.”
13. Following the abolition of the National Treatment Agency in April 2013 and the transfer of budgets and commissioning responsibilities for substance misuse services to Directors of Public Health (DsPH), based in local authorities, there are significant financial pressures on drug and alcohol treatment, and there is no guarantee that drug service provision will remain at its current level across all local areas. Drug and alcohol services are just one of 17 areas of commissioning responsibility for DsPH; moreover, there is no ‘ring-fencing’ or other meaningful protection for substance misuse services within the public health grant, and they are not mandated public health services that must be provided by all local authorities. As such, there is a need for more careful consideration of whether the levels of provision needed to implement this requirement will be available in all local areas.

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<sup>4</sup> <http://www.ukdpc.org.uk/wp-content/uploads/Article%20-%20The%20role%20of%20drug%20testing%20in%20the%20criminal%20justice%20system.pdf>

14. A lack of specialist provision in some areas may also result in some people being mandated to attend appointments at services that are not able to meet their particular needs effectively, or, in some cases, where their safety could be compromised. DrugScope has recently published reports on domestic violence and substance misuse, and on women involved in prostitution and substance use.<sup>5</sup> The reports highlight the importance of women-only provision, given that many women with substance use problems have experienced physical and/or sexual violence, or are in relationships that are abusive. While we welcome the amendment to the Bill, under Clause 11, that the specific needs of women must be addressed in the provision of supervision and rehabilitation services, our reports point to the current lack of women-only provision across substance misuse service in some areas.
15. Additionally, the evidence for the effectiveness of mandating people to attend appointments as a way of ensuring subsequent engagement with treatment is not convincing – for instance, as in the Required Assessment process in the Drug Interventions Programme (DIP). The National Audit Office (2010) cites Home Office research that found that crimes committed by those receiving DIP support and in drug treatment fell by 26% compared to their frequency of offending on entering the programme.<sup>6</sup> However, despite the successes of DIP, there has been significant attrition. Of those who were assessed under DIP in 2010-11, 29.6% went voluntarily into treatment, and 6.1% successfully completed this treatment.
16. As a national programme, DIP had other significant benefits; however, the evidence it provides specifically on the issue of treatment engagement and completion is relevant to assessing the potential costs and impact of introducing the new drug appointment requirement. The National Audit Office also concluded that DIP had been too narrowly focused on facilitating access to treatment, and particularly that there was limited help to secure access to accommodation, although service users said this was the major problem they faced. The development of Integrated Offender Management (IOM) services, which may incorporate DIP provision alongside other support, has been a positive step, but there remain significant obstacles to accessing housing and other forms of ‘recovery capital’ for many ex-offenders.
17. While there is no obligation to “submit to treatment” under the requirement, we would raise a concern about what “treatment” means, and how it may be interpreted in practice. It could, for instance, be interpreted to mean only medical treatment, meaning that some individuals could be required to participate in psychosocial interventions. While we have concerns about the drug appointment requirement overall, we would suggest that, if it is to be implemented, further clarification in this area is needed. The 2010 Drug Strategy rightly describes recovery as an “individual, person-centred journey”, with the implication that different kinds of treatment are appropriate to different individuals at different stages, which would also need to be recognised.

**For further information about this briefing, please contact Gemma Lousley, Policy and Engagement Officer, on 0207 234 9735, or at [gemma@drugscope.org.uk](mailto:gemma@drugscope.org.uk)**

<sup>5</sup> See <http://www.drugscope.org.uk/Resources/Drugscope/Documents/PDF/Policy/DVReport.pdf> and [http://www.drugscope.org.uk/Resources/Drugscope/Documents/PDF/Policy/Challenge%20of%20change\\_policy%20briefing.pdf](http://www.drugscope.org.uk/Resources/Drugscope/Documents/PDF/Policy/Challenge%20of%20change_policy%20briefing.pdf)

<sup>6</sup> <http://www.nao.org.uk/wp-content/uploads/2010/03/0910297.pdf>